?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%Dated: 14.03.2019
*CORAM
THE HONOURABLE MR.JUSTICE M.DHANDAPANI
+Criminal Appeal (MD) No.309 of 2013

#M.A.Madhavan
.. Appellant/
Sole Accused
Vs.

$State Rep. by
The Inspector of Police,
CBI/ACB, Chennai.
[RC/MA1/2008/A/0026] .. Respondent/
Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) Cr.P.C., to set aside judgment of conviction and sentence dated 30.09.2013, passed in C.C.No.12 of 2008, by the learned II Additional District Judge for CBI Cases, Madurai, and allow the appeal by acquitting the appellant.

!For Appellant : Mr.R.Shanmugasundaram
Senior Counsel
for Mr.P.Thilak Kumar

^For Respondent : Mr.R.Sudevkumar
Special Public Prosecutor
for CBI Cases

:JUDGMENT

This appeal is directed against the judgment dated 30.09.2013, made in C.C.No.12 of 2008 of the learned II Additional District Judge for CBI Cases, Madurai, convicting the appellant, who was facing trial for the offences punishable under Sections 420, 468 r/w. 471 and 477A IPC and Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 [hereinafter referred to as --the Act--] and sentencing him with rigorous imprisonment for one year with a fine of Rs.1,000/~, in default, to undergo rigorous imprisonment for three months for the offence punishable under Section 420 IPC, and with rigorous imprisonment for one year with a fine of Rs.1,000/~, in default to undergo rigorous imprisonment for three months for the offence punishable under Section 468 r/w. 471 IPC and with rigorous imprisonment for one year with a fine of Rs.1,000/~, in default, to undergo rigorous imprisonment for three months for the offence punishable under Section 477A IPC and with rigorous imprisonment for one year with a fine of Rs.1,000/~, in default, to undergo rigorous imprisonment for three months for the offence punishable under Section 13(2) r/w. 13(1)(d) of the Act.

2.The case of the prosecution is that the appellant ? Madhavan was working as Development Officer, Branch Office, Tirunagar, United India

Insurance Company Ltd., Madurai. On 30.05.2008, at 12.30 p.m., the Inspector of Police/CBI ACB, Chennai, [P.W.27] has registered an F.I.R. against the appellant and one P.Chockalingam [P.W.7], for the offences punishable under Sections 120~B r/w. 420 and 468, 468 r/w. 471 and 477~A I.P.C. and Section 13(2) r/w. 13(1)(d) of the Act. After completion of investigation, the CBI filed a charge sheet before the II Additional District Court for CBI Cases, Madurai, which was numbered as C.C.No.12 of 2008, alleging that on 15.02.2000, about 06.45 a.m., the Tractor~cum~Trailer bearing Registration No.TN~60~2587 and TNU~3214 respectively, belongs to P.Chockalingam [P.W.7], which was driven by one P.Raman ? P.W.6, brother of P.W.7, met with an accident, at S.V.S.S.K. Weigh Bridge, Rajammal Nagar, Madurai, due to rash and negligent driving by P.W.6. At the time of accident, five coolies and one Pandi, cleaner of the vehicle, were travelling in vehicle along with P.W.6. Due to the said impact, all the seven had sustained injuries. The said Pandi died on the way to Hospital and Muniasamy died on 17.02.2000 at Jawahar Hospital, Madurai.

2.1.Further, on getting information about the accident of the said vehicle, P.W.8 ? R.Chellam and P.W.7 ? Chockalingam visited the Office of P.W.9 ? R.Renga Bashyam, who was working as Broker on 15.02.2000 and vide ACS3 Receipt No.705111 by the appellant and as per the Motor Acceptance Advice dated 15.02.2000, the amount of Rs.760/~ was taken into account on 15.02.2000, vide collection No.10494 dated 15.02.2000, covering the risk period i.e., effective date from 16.02.2000 to 15.02.2001 for the said vehicle. The schedule Policy No.90401/31/32/419/11/16273/99, Certificate No.6/16273/99 also clearly reveals that the premium of Rs.760/~ with the Cashier on 15.02.2000 and the risk cover will effect from 16.02.2000 to 15.02.2001 only as per the Insurance Company Policy/Rules.
2.2.Further, the appellant had received the said cover note bearing No.253741 from L.Suganthi [P.W.2], dealing clerk of United India Insurance Company Ltd., only on 14.02.2000 and allotted Policy No.16273, vide acceptance advice No.452, in the name of P.W.7 ? Chockalingam for the vehicle in question, which had been entered only on 15.02.2000 in the Motor Policy Register at Page No.86. Thereafter, one P.Kaamaayee, W/o.T.Pandi and Muthu Meenal, W/o.Muniasamy, filed petitions before the Court of Commissioner for Workmen-s Compensation, Madurai, vide W.C.No.126 of 2003 and in the Court of II Additional Subordinate Judge, Madurai, vide M.C.O.P.No.957 of 2004 respectively, enclosing the ante~dated original cover note date as 07.02.2000 issued by the appellant on 15.02.2000, to prove that on the date of accident, the said vehicle was having a valid insurance coverage. Based on the ante~ dated Insurance cover, the Court directed the United India Insurance Company to pay compensation to the victims to the tune of Rs.9,38,406/~.
2.3.Further, the said amount was paid by the Insurance Company only based on the orders passed by the Court, which was done on the strength of the forged ante~dated cover note issued by the appellant to prove that the vehicle was having a valid insurance cover at the time of accident, however, no insurance policy was in existence on the date of accident. Hence, the act of the appellant caused wrongful loss of Rs.9,38,406/~ to the Insurance Company.
2.4. Though initially no one has made a complaint, based on the sources of information, the CBI initially registered an FIR against the appellant as

well as P.W.7. However, they filed final report implicating only the appellant in the above said case before the learned II Additional District Judge for CBI Cases, Madurai.

2.5.After perusing the records, the Trial Court framed the following charges against the appellant/accused:~

--Charge No.1

You M.A.Madhavan, while working as Development Officer, United India Insurance Company Ltd., Branch Office, Tirunagar, Madurai, during the year 2001 ? 2002, by abusing his official position, has issued ante~dated cover note, by putting the date as 07.02.2000 in original, covering the risk period from 08.02.2000 to 07.02.2001, for Tractor No.TN~60~2587 and Trailer No.TNU~ 3214, whereas, the actual date of issue was 15.02.2000 and the vehicle met with an accident on 15.02.2000 about 06.45 a.m., in which, two persons died and five persons sustained injuries. On the basis of the ante~dated original cover by M.A.Madhavan, the United India Insurance Company Ltd., has paid compensation to the tune of Rs.9,38,406/~ to the victims, for which, they were actually not eligible and thereby, committed an offence under Section 420 IPC.

Charge No.2:~

The vehicle was purchased by P.Chockalingam from Sivasankaran in the month of January / February 2000. Since the vehicle does not have a valid insurance cover at the time of purchase, the name change is not possible. Thereafter, one Chellam, Proprietor of Mahalakshmi Finance at Madurai, introduced Rangabhshyam, Broker, RTO Offfice, Madurai, to P.Chockalingam. The said Rangabhyshyam contacted you M.A.Madhavan and you visited the Office of Rangabhshyam and collected Rs.800/~ along with a copy of the RC Book and particulars of P.Chockalingam from him. You, even though collected the papers and money from Rangabhshyam in the 1st week of February 2000, had not taken any action to issue the cover note and kept the money with you till 15.02.2000. On 15.02.2000 about 06.45 a.m. the vehicle belongs to Chockalingam, which was driven by P.Raman, brother of P.Chockalingam, met with an accident due to his rash and negligent driving. Fully knowing that an Insurance cover note is very much essential for the said vehicle, which was met with an accident on 15.02.2000 about 06.45 a.m. to prefer claim out of this accident, you M.A.Madhavan prepared and issued the original Insurance Cover note putting ante~date as 07.02.2000 on 15.02.2000 covering the risk period from 08.02.2000 to 07.02.2001 for the said vehicle and handed over the same to Rangabhshyam. But, in the duplicate copies of the said cover note, you M.A.Madhavan wrote the date of issue as 15.02.2000 covering the risk period from 16.02.2000 to 15.02.2000 for the said vehicle. The proposal forms for insurance policy and the additional questionnaire for motor proposal with break in coverage for the said vehicle were also filled up by you M.A.Madhavan on 15.02.2000 only, duly forged the signature of P.Chockalingam in the proposer-s signature columns and thereafter, Rangabhshyam produced the ante~dated cover note before the RTO, Madurai South, on 15.02.2000 itself and renamed the ownership in the name of P.Chockalingam in the RC Book, which was produced before the police authority and released his vehicle from the police custody and thereby, you have committed the offence punishable under Section 468 r/w. 471 IPC.

Charge No.3:~

You M.A.Madhavan even though collected the papers and money from

Rangabhashyam in the 1st week of Februrary 2000, had not taken any action to issue the cover note and kept the money with him till 15.02.2000 and paid premium of Rs.760/~ only on 15.02.2000 and the risk cover will effect from 16.02.2000 to 15.02.2001 only as per the Insurance Company Policy/Rules. You M.A.Madhavan had received the cover note from L.Suganthi, dealing clerk only on 14.02.2000 and allotted Policy No.16273 in the name of P.Chockalingam, which had been entered in the Motor Policy Register at Page No.86 on 15.02.2000 and thereby, committed an offence under Section 477~A IPC.
Charge No.4:~
On the strength of the forged ante~dated cover note issued by you M.A.Madhavan by abusing your official position to prove that the vehicle was having a valid insurance cover at the time of accident, Rs.9,38,406/~ had been paid by the Insurance Company for compensation. Had you M.A.Madhavan issued the cover note correctly, the claim would not have been raised against the Insurance Company by the next kin of the deceased persons. That act of you M.A.Madhavan caused wrongful loss of Rs.9,38,406/~ to the United India Insurance Company Ltd., which you had done by abusing your official position and forging the documents and thereby, you have committed an offence punishable under Section 13(2) r/w. 13(1)(d) of the P.C. Act, 1988.--

2.6.To substantiate the charges against the appellant/accused, the prosecution examined 27 witnesses as P.Ws.1 to 27 and marked 65 documents as Exs.P.1 to P.65. To disprove the prosecution version, no witnesses were examined and no documents were marked on the side of the appellant/accused.

2.7.The Trial Court framed the following point for consideration:~
--Whether the prosecution had proved the charges against the accused beyond all reasonable doubt?--

2.8.Upon consideration of oral and documentary evidence, the learned II Additional District Judge for CBI Cases, Madurai, found that the prosecution has proved their case beyond reasonable doubt and convicted the accused as stated supra.

3.Against the judgment of the Trial Court, dated 30.09.2013, the appellant/accused has preferred this Criminal Appeal.

4.Assailing the findings of the Trial Court, the learned Senior Counsel appearing for the appellant submitted that though the FIR was registered against P.W.7, owner of the vehicle as well as the appellant for the offences punishable under Sections 120~B r/w. 420 and 468, 468 r/w. 471 and 477~A I.P.C. and Section 13(2) r/w. 13(1)(d) of the Act on 30.05.2008, the CBI has filed a charge sheet only against the appellant for the reasons best known to them and there is no proper explanation for dropping A2 in the above said case. The learned Senior Counsel further submitted that P.W.1 sanctioned prosecution in respect of the appellant, who was working as Development Officer, Branch Office, Tirunagar, United India Insurance Company Ltd., Madurai. As per the General Insurance Conduct, Discipline and Appeal Rules, the competent authority is the Board of Directors. However, in the present case, the Chief Regional Manager had granted sanction, which is unsustainable

one.

5.The learned Senior Counsel appearing for the appellant submitted that the very same issue was dealt with by the Karnataka High Court in the case of K.T.Uthappa and another Vs. State of Karnataka, By the Inspector of Police, CBI/ACB, Bangalore, in Crl.A.Nos.933 and 835 of 2010, decided on 01.03.2012, wherein the Karnataka High Court has clearly held that as per the Memorandum and Articles of Association, the Board-s authorisation is must and there is no separate rules for the United India Insurance Company Limited and the Rules, which were applied were the General Insurance Conduct Discipline Appeal Rules 1975 (CDA Rules). The CDA Rules were not placed before the Parliament and no Gazette Notification was issued. In such circumstances, the CDA Rules could not have been invoked and therefore, the sanction order is invalid. Aggrieved by the said order, the State of Karnataka, CBI, ACB, Bangalore, preferred Criminal Appeal Nos.1872 and 1873 of 2014 before the Hon-ble Apex Court and the Hon-ble Apex Court, vide order dated 03.11.2015, affirmed the view taken by the Karnataka High Court.

6.The learned Senior Counsel appearing for the appellant further submitted that the necessary ingredients required under Section 13(2) r/w. 13(1)(d) of the Act has not established by the prosecution, accordingly, the learned Senior Counsel prayed for acquittal of the appellant.

7.The learned Special Public Prosecutor appearing for CBI Cases submitted that in respect of the offence under Section 13(2) r/w. 13(1)(d) of the Act, the prosecution has proved their case beyond all reasonable doubts and prayed for dismissal of the Criminal Appeal.

8.I have heard the learned counsel appearing for the parties and perused the materials available on record.

9.Upon careful re~assessment of the evidence and the judgment of the Trial Court, other materials on record and submissions made by the learned counsel appearing for the parties, the following points arise for consideration in this Criminal Appeal:~
1.Whether the decision relied on by the learned Senior Counsel for the appellant in respect of sanction of prosecution, is applicable to the facts of the present case?
2.Whether the prosecution has proved the charges framed against the appellant beyond all reasonable doubts?

10.The provision of Section 13(1)(d) of the Act, makes it clear that a public servant by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuinary advantage is said to commit the offence of criminal misconduct. In the present case, there is no charge against the appellant that he obtained illegal gratification from P.W.9 ? Renga Bashyam. The charge against the appellant is that the said Renga Bashyam paid Rs.800/~ to the appellant for the purpose of renewing Insurance policy. The policy amount is Rs.760/~ and that amount was paid belatedly. However, it is also admitted that on 15.02.2000, i.e., on the date of accident, he paid the amount, whereas, the Insurance Policy expired on

07.02.2000 itself. However, no allegation was made with regard to illegal gratification for advancing the date of Insurance Policy.

11.In view of the above said facts, this Court is of the firm opinion that the offence under Section 13(2) r/w. 13(1)(d) of the Act against the appellant is not made out. Further, the decision relied on by the learned Senior Counsel appearing for the appellant is squarely applicable to the facts of the present case. Hence, the sanction of prosecution in respect of the offence punishable under Section 13(2) r/w. 13(1)(d) of the Act is unsustainable one. Therefore, implicating the appellant in the said offence is unsustainable one and the conviction and sentence imposed on the appellant under Section 13(2) r/w. 13(1)(d) of the Act are set aside and is acquitted from the said charge.
12.Insofar as the offences under Sections 420, 468 r/w. 471 and 477~A IPC are concerned, the Expert, who gave a report, which is marked as Ex.P.62, opined that the signature contained in Ex.P.5 and the other specimen signatures obtained from the appellant have tallied. In view of the same, the offences against the appellant under Sections 420, 468 r/w. 471 and 477~A IPC are proved.

13.The learend Senior Counsel appearing for the appellant submitted that the appellant has already paid the entire compensation amount and no loss is caused to the Insurance Company and therefore, the learned Senior Counsel seeks indulgence of this Court to show some leniency in the matter of sentence.
14.The learned Special Public Prosecutor appearing for CBI Cases has no serious objection on the request made by the learned Senior Counsel appearing for the appellant.

15.In view of the abovesaid submissions and considering the facts and circumstances of the case and also considering the fact that the appellant has already paid the entire compensation amount and no loss is caused to the Insurance Company and there is no minimum sentence prescribed for the said offences in the I.P.C., this Court reduces the sentence imposed on the appellant as follows:~

Conviction imposed	Sentence imposed	Sentence reduced to
420 IPC	one year rigorous imprisonment and pay fine of Rs.1,000/~, in default, three months rigorous imprisonment.	one month rigorous imprisonment. Fine amount and default sentence are confirmed.
468 r/w. 471 IPC	one year rigorous imprisonment and pay fine of Rs.1,000/~, in default, three months rigorous imprisonment.	one month rigorous imprisonment. Fine amount and default sentence are confirmed.
477~A IPC	one year rigorous imprisonment and pay fine of Rs.1,000/~, in default, three months rigorous imprisonment.	

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13(2) r/w. 13(1)(d) of the P.C. Act
one year rigorous imprisonment and pay fine of Rs.1,000/~, in default, three months rigorous imprisonment.
set aside and acquitted.

16.All the sentences are ordered to run concurrently and the period of imprisonment already undergone by the appellant shall be given set off under Section 428 Cr.P.C. The appellant is directed to surrender before the Trial Court and the Trial Court shall commit him to prison to undergo the remaining period of sentence now modified by this Court. The bail bond, if any, executed by the appellant stands cancelled. The fine amount already paid by the appellant may be appropriated in favour of the State. This Criminal Appeal is partly allowed accordingly.

To

1.The II Additional District Judge for CBI Cases,
Madurai.

2.The Special Public Prosecutor for CBI Cases,
Madurai Bench of Madras High Court,
Madurai.

3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.